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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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May 17, 2007

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### DIRECTORY

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# DOCKETS

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**100-07-BZ**

642 Barclay Avenue, West side of Barclay Avenue 0' south of Hylan Boulevard., Block 6398, Lot(s) 9, Borough of **Staten Island, Community Board: 3.** (SPECIAL PERMIT)-72-01(b) & 72-21-To permit the construction of a one story and cellar community facility building (medical offices (UG4).

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**101-07-BZ**

2306 Avenue M, Southside, 40'-0" east of East 23rd Street between East 23rd & East 24th Streets., Block 7627, Lot(s) 42, Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT) 73-622-Proposed to erect a one story rear enlargement to the existing one family residence.

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**102-07-BZ**

1268 Forest Avenue, southeast corner of Forest Avenue and Ordell Avenue., Block 388, Lot(s) 48, Borough of **Staten Island, Community Board: 1.** (SPECIAL PERMIT) 73-36-To legalize the existing Physical Culture Establishment.

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**103-07-BZ**

91-10 146th Street, Premises located at north west corner 146th Street & 91st Avenue approximately 80 feet north of Archer Avenue., Block 9986, Lot(s) 61, Borough of **Queens, Community Board: 12.** (SPECIAL PERMIT) 73-19-.

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**104-07-BZ**

1243 East 29th Street, South side of Avenue L., Block 7647, Lot(s) 28, Borough of **Brooklyn, Community Board: 14.** (SPECIAL PERMIT) 73-622-Extend rear at all floors.

-----

**105-07-A**

198-24 47th Avenue, South side of 47th Avenue 165.37 feet west of Francis Lewis Boulevard., Block 5618, Lot(s) 49, Borough of **Queens, Community Board: 11.** Appeal-Existing unoccupied house to be demolished, vacant parcel to be developed with four two family dwellings, semi-detached.

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**106-07-A**

198-28 47th Avenue, South side of 47th Avenue 165.37 feet west of Francis Lewis Boulevard., Block 5619, Lot(s) 20, Borough of **Queens, Community Board: 11.** Appeal-Existing unoccupied house to be demolished, vacant parcel to be developed with four two family dwellings, semi-detached.

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**107-07-A**

47-17 199th Street, South side of 47th Avenue 165.37 feet west of Francis Lewis Boulevard., Block 5619, Lot(s) 120, Borough of **Queens, Community Board: 11.** Appeal-Existing unoccupied house to be demolished, vacant parcel to be developed with four two family dwellings, semi-detached.

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**108-07-A**

47-18 199th Street, South side of 47th Avenue 165.37 feet west of Francis Lewis Boulevard., Block 5618, Lot(s) 149, Borough of **Queens, Community Board: 11.** Appeal-Existing unoccupied house to be demolished, vacant parcel to be developed with four two family dwellings, semi-detached.

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**109-07-BZ**

33-57 59th Street, Triangle formed by 59th Street, 34th Avenue and 60th Street., Block 1183, Lot(s) 70, Borough of **Queens, Community Board:** Under 72-21-Front yard, side yard and lot coverage variances are being sought to construct a single family home on a steeply tapered triangle shaped property.

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**110-07-BZ**

53 Crosby Street, Located on east side of Crosby Street between Spring Street and Broome Street., Block 482, Lot(s) 7, Borough of **Manhattan, Community Board: 2.** (SPECIAL PERMIT) 73-01,73-03-To permit the enlargement of a non-residential building.

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**111-07-BZ**

155 Norfolk Street, East side, 325'0" north of Oriental Boulevard between Oriental Boulevard and Shore Boulevard., Block 8757, Lot(s) 34, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT) 73-622-Proposed to remove the non-complying roof and replace it with a complying one and show compliance with Section 73-622.

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**112-07-BZ**

1089-1093 East 21st Street, Between Avenue I and Avenue J (approximately 299' north of Avenue J), Block 7585, Lot(s) 21 & 22 (tent. 21), Borough of **Brooklyn, Community Board: 14.** Under 72-21-To allow the construction of a synagogue at the subject location. The synagogue will replace an existing synagogue already located on the site.

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# DOCKET

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**113-07-BZ**

155 Clay Pit Road, Northeast corner of the intersection of Veterans Road East and Clay Pit Road., Block 7105, Lot(s) 679, Borough of **Staten Island, Community Board: 3.** (SPECIAL PERMIT) 73-30-For a non-accessory radio tower, which is a public utility wireless communication facility and will consist of an 82-foot stealth, together with antennas mounted therein and related equipment at the base thereof.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JUNE 5, 2007, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 5, 2007, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**198-66-BZ, Vol. II**

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners, Corp., owner.

SUBJECT – Application April 17, 2007 – Extension of Time to Complete Construction to permit modification to the size, configuration and design of an existing plaza for a residential high rise building which expired on January 19, 2006; an Extension of Time to obtain a Certificate of Occupancy which expired on October 19, 2006 and a waiver of Rules of Practice and Procedure located in a C1-9 zoning district.

PREMISES AFFECTED – 300 East 74<sup>th</sup> Street, southeast corner of 2<sup>nd</sup> Avenue and East 74<sup>th</sup> Street, Block 1448, Lot 3, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**215-78-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for East 72<sup>nd</sup> Realty, LLC, owner.

SUBJECT – Application May 13, 2007 – Extension of Term/Waiver for an additional ten years the term of a variance previously granted pursuant to Section 60(3) of the Multiple Dwelling Law, allowing surplus parking spaces in an attended accessory garage to be used for transient parking located in an R10, R8B and C2-8/R10A zoning district.

PREMISES AFFECTED – 1353-1367 York Avenue, west side of York Avenue between East 72<sup>nd</sup> and 73<sup>rd</sup> Streets, Block 1467, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**139-92-BZ**

APPLICANT – Samuel H. Valencia, for Valencia Enterprises, owner.

SUBJECT – Application March 9, 2007 – Extension of Term for a UG12 eating and drinking establishment with dancing located on the first floor of a three story, mixed use building with residences on the upper floors in a C2-2/R-6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53' east of 52<sup>nd</sup> Street, Block 1315, Lot 76, Borough of Queens.

**COMMUNITY BOARD #3Q**

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**305-01-BZ thru 320-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Terrace Court Development, LLC, owner.

SUBJECT – Application April 27, 2007 – Extension of time to complete construction of a residential development which was granted on March 25, 2003. M1-1/M1-2 zoning district.

PREMISES AFFECTED – 65-77, 79, 81, 83 through 87, 89, 91, 93, 95, 97, 99, 101, 103 Terrace Court, Block 3605, Lot 200, Borough of Queens.

**COMMUNITY BOARD #5Q**

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**37-03-BZ thru 39-03-BZ**

APPLICANT – Sheldon Lobel, P.C., for Terrace Court Development, LLC, owner.

SUBJECT – Application April 27, 2007 – Extension of time to complete construction of a residential development which was granted on March 25, 2003. M1-1/M1-2 zoning district.

PREMISES AFFECTED – 65-78, 80, 82 Terrace Court, Block 3605, Lot 200, Borough of Queens.

**COMMUNITY BOARD #5Q**

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**170-06-A & 171-06-A**

APPLICANT – Adam Rothkrug, Esq., for Ely Building LLC, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of two, three family homes located within the bed of a mapped but unbuilt street (Needham Avenue) contrary to Section 35 of General City Law. R5 Zoning District.

PREMISES AFFECTED – 3546 and 3548 Ely Avenue, north of Boston Road, Block 4892, Lots 24, 25, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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**173-06-A**

APPLICANT – Adam Rothkrug, Esq., for Hamid Kavian, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of a single family home to be located within the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning District.

PREMISES AFFECTED – 240-28 128<sup>th</sup> Avenue, southwest corner 128<sup>th</sup> Avenue and Hook Creek Boulevard, Block 12857, Lot 32, Borough of Queens.

**COMMUNITY BOARD #13Q**

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# CALENDAR

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**JUNE 5, 2007, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 5, 2007, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**39-06-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Rachel Klagsbrun, owner.

SUBJECT – Application March 8, 2006 – Variance (§ 72-21) to allow the legalization of two (2) dwelling units (U.G. 2) in an existing three-story industrial building. Ground floor is proposed to be retained as manufacturing space (U.G. 17d). M1-2 district.

PREMISES AFFECTED – 245 Varet Street, north side 100' east of intersection of White Street and Varet Street, Block 3110, Lot 33, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**227-06-BZ**

APPLICANT – Eric Palatnik, P.C., for George Smith, owner.

SUBJECT – Application September 6, 2006 – Variance (§72-21) to allow a two-story commercial office building (U.G.6) contrary to use regulations (§ 22-00). R3-2 district.

PREMISES AFFECTED – 2066 Richmond Avenue, Richmond Avenue, north of Knapp Street, Block 2102, Lot 90, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**15-07-BZ**

APPLICANT– Slater & Beckerman, LLP, for Bronx Lebanon Hospital Center, owner.

SUBJECT – Application January 11, 2007 – Variance (§ 72-21) to allow a new nine (9) story hospital building (U.G. 4) that exceeds maximums for floor area ratio (§ 24-11), lot coverage (§ 24-11) and height and setback (§ 24-522). R8 district.

PREMISES AFFECTED – 199 Mt. Eden Parkway, between Selwyn Avenue and Morris Avenue, Block 2824, Lot 19, Borough of Bronx.

**COMMUNITY BOARD #4BX**

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APPLICANT – Law Office of Slater & Beckerman LLP for Hudson Alley, Incorporated, owner; Cadence Cycling & Multisport Centers, lessee.

SUBJECT – Application April 3, 2007 – (SPECIAL PERMIT) §73-36 – To permit a cellar and on the first floor of six-story building, a Physical Culture and Health Establishment. The Premises are located within an M1-5 zoning district within the Special Tribeca Mixed Use District (Area B1), and in the Tribeca North Historic District.

PREMISES AFFECTED – 174 Hudson Street, Southeast corner of Vestry Street and Hudson Street, Block 220, Lot 31, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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*Jeff Mulligan, Executive Director*

**75-07-BZ**

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, MAY 8, 2007  
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown and Commissioner Hinkson.  
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**SPECIAL ORDER CALENDAR**

**72-96-BZ, Vol. II**

APPLICANT – The Law Office of Fredrick A. Becker, for  
30 WS LLC, for New York Sports Club, lessee.

SUBJECT – Application December 29, 2006 – Extension of  
Term/Amendment – To allow the operation of a Physical  
Culture Establishment/Health Club on portions of the cellar,  
first floor, first floor mezzanine, second floor and third floor  
of the existing twelve story commercial building located in a  
C5-5 (LM) zoning district. The application seeks to amend  
the hours of operation previously approved by the board.

PREMISES AFFECTED – 30 Wall Street, north side of  
Wall Street, 90' east of Nassau Street, Block 43, Lot 5,  
Borough of Manhattan.

**COMMUNITY BOARD #1M**

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Application granted on  
condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, a reopening, an amendment  
to change the hours of operation, and an extension of the  
term for a previously granted special permit for a Physical  
Culture Establishment (PCE), which expired on May 31,  
2006; and

WHEREAS, a public hearing was held on this  
application on April 24, 2007 after due notice by publication  
in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, Community Board 1, Manhattan,  
recommends approval of the application; and

WHEREAS, the subject premises is located on the north  
side of Wall Street, 90 feet east of Nassau Street; and

WHEREAS, the site is located within an C5-5 zoning  
district within the Special Lower Manhattan District, and is  
occupied by a 12-story commercial/office building; and

WHEREAS, the PCE occupies 4,724 sq ft. on the cellar  
level, 6,892 sq. ft. on the first floor, 1,867 sq. ft. on the first  
floor mezzanine, 7,408 sq. ft. on the second floor, and 7,788 sq.  
ft. on the third floor for a total floor space of approximately  
28,379 sq. ft.; and

WHEREAS, the PCE is operated as New York Sports

Club; and

WHEREAS, on April 29, 1997, under the subject  
calendar number, the Board granted a special permit, pursuant  
to ZR § 73-36, to permit the continued operation of the PCE in  
the subject building; and

WHEREAS, on February 8, 2000, the Board permitted:  
(1) the expansion of the PCE onto the third floor, (2) layout  
modifications to the second floor, and (3) a change in the hours  
of operation to Monday through Friday, 6:30 a.m. to 10:00  
p.m., and closed on Saturday and Sunday; and

WHEREAS, the instant application seeks to extend the  
term of the variance for an additional ten years; and

WHEREAS, additionally, the applicant proposes to  
legalize a change in the hours of operation to Monday through  
Thursday, 6:30 a.m. to 10:00 p.m.; Friday, 5:30 a.m. to 9:00  
p.m.; Saturday 9:00 a.m. to 6:00 p.m., and to remain closed on  
Sunday; and

WHEREAS, the applicant does not propose any change  
to the approved bulk, egress, floor area, or occupancy; and

WHEREAS, based upon its review of the record, the  
Board finds that the requested extension of term and  
amendment to the hours of operation are appropriate with  
certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and  
Appeals *waives* the Rules of Practice and Procedure, *reopens*,  
and *amends* the resolution, dated April 29, 1997, so that as  
amended this portion of the resolution shall read: “to grant an  
extension of the variance for a term of ten years from the  
expiration of the last grant to expire on May 31, 2016 and to  
legalize a change in the hours of operation; *on condition* that  
any and all work shall substantially conform to drawings as  
they apply to the objections above noted, filed with this  
application marked “Received December 29, 2006”–(8) sheets;  
and; and *on further condition*:

THAT there shall be no change in ownership or  
operating control of the PCE without prior approval from the  
Board;

THAT this grant shall expire on May 31, 2016;

THAT the above conditions shall appear on the  
Certificate of Occupancy;

THAT a new Certificate of Occupancy shall be obtained  
by November 9, 2007;

THAT all conditions from prior resolutions not  
specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the  
Board in response to specifically cited and filed DOB/other  
jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the Zoning  
Resolution, the Administrative Code, and any other relevant  
laws under its jurisdiction irrespective of plan(s) and/or  
configuration(s) not related to the relief granted.”  
(DOB Application No. 102100487)

Adopted by the Board of Standards and Appeals, May  
8, 2007.  
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# MINUTES

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## 10-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Crislis Realty Corp., owner.

SUBJECT – Application March 14, 2007 – Extension of Time to complete construction and a waiver of the rules for a Variance (§72-21) to permit, in an R-5 zoning district, the proposed development of a one story building to be used as four retail stores (Use Group 6) which expired July 10, 2005.

PREMISES AFFECTED – 85-28/34 Rockaway Boulevard, southwest corner of the intersection formed between Rockaway Boulevard and 86<sup>th</sup> Street, Block 9057, Lots 27 and 33, Borough of Queens.

### COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of a one-story building, which expired on July 10, 2005; and

WHEREAS, a public hearing was held on this application on April 24, 2007 after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the subject premises is located on the southwest corner of Rockaway Boulevard and 86<sup>th</sup> Street; and

WHEREAS, on July 10, 2001, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit, within an R5 zoning district, the construction of a one-story commercial building with four retail stores; and

WHEREAS, the applicant represents that construction was 80 percent complete in March 2006, but was delayed in part because of complications with a sewer connection sign-off; the applicant represents that now all exterior construction is complete and only interior work remains; and

WHEREAS, the applicant now requests an additional year to complete construction; and

WHEREAS, the Board finds that a one-year extension is appropriate, with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 10, 2001, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction for a term of one year from the date of this grant; *on condition* that the use and operation of the building shall substantially conform to BSA-approved plans; and *on condition*:

THAT construction shall be completed by May 8, 2008;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 401191223)

Adopted by the Board of Standards and Appeals, May 8, 2007.

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## 44-06-BZ, Vol. II

APPLICANT – Rothkrug, Rothkrug & Spector, for Philip & Laura Tuffnel, owner.

SUBJECT – Application October 13, 2006 – Rehearing of a previously granted variance (§72-21) the vertical enlargement of an existing single family home, to permit notification of affected property owners and public officials in an R3A zoning district.

PREMISES AFFECTED – 150-24 18<sup>th</sup> Avenue, south side of 18<sup>th</sup> Avenue, 215’ east of intersection with 150<sup>th</sup> Street, Block 4687, Lot 43, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 16, 2006, acting on Department of Buildings Application No. 402282123, reads, in pertinent part:

“1. Proposed enlargement of an existing non-complying one-family dwelling, without the required side yard is contrary to 54-31 and 23-461 ZR. Note: Existing exterior wall is greater than 6” from lot line and cannot be considered as lot line wall.”

2. Proposed enlargement of one-family dwelling, which will exceed permitted floor area ratio, is contrary to Section 23-141 ZR.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side yards and floor area, contrary to ZR §§ 23-141, 23-461, and 54-31; and

WHEREAS, an initial public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on August 8, 2006; and

WHEREAS, however, after this decision date, the Board

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learned that the applicant did not have proof that the proper notice had been performed, specifically that the property owners within a 200-ft. radius of the site had been notified; and

WHEREAS, therefore, the Board scheduled a re-hearing; and

WHEREAS, the re-hearing was held on this application on December 5, 2006, after due notice by publication in *The City Record*, with continued hearings on January 9, 2007, January 30, 2007, March 6, 2007, and April 10, 2007, and then to decision on May 8, 2007; and

WHEREAS, accordingly, this resolution supersedes the resolution dated August 8, 2006 and the plans associated with it, marked "Received August 7, 2006"– (4) sheets, which are hereby nullified; and

WHEREAS, the Board notes that the applicant provided documentation that the affected property owners (within a 200-ft. radius of the site) received proper notification of the re-hearing; the Board received nine forms for objection and consent from affected property owners and several property owners provided testimony at the re-hearing, as noted below; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, Community Board 7, Queens, recommended approval of this application; and

WHEREAS, the Queens Borough President, Helen Marshall, recommended approval of this application; and

WHEREAS, the Concerned Homeowners Association provided a letter in opposition to the application, citing concerns about not being given the opportunity to discuss the project with the Community Board before its vote on the project, not being notified about the Board's initial hearing, scheduling conflicts with the hearings, and general concerns about the proposed home enlargement; and

WHEREAS, at hearing, certain neighbors provided testimony about the potential impact the enlargement might have on adjacent property owners' access to open space and privacy; and

WHEREAS, the site is located on the south side of 18th Avenue, 215 feet east of 150<sup>th</sup> Street; and

WHEREAS, the site is 20 ft. in width and 100 ft. in depth, with a total lot area of 2,000 sq. ft.; and

WHEREAS, the site is currently improved upon with a 728 sq. ft. one-story with cellar single-family home; and

WHEREAS, the applicant represents that available records indicate that the existing structure was constructed in 1931; and

WHEREAS, on December 15, 1961, the site was mapped within an R3-1 zoning district, but on December 21, 2005, the area was rezoned to R3A; and

WHEREAS, the applicant proposes to add a second story to the existing one-story house; and

WHEREAS, this addition will increase the floor area from 728 sq. ft. (0.36 FAR) to 1,320 sq. ft. (FAR of 0.66); the maximum floor area permitted is 1,200 sq. ft. (FAR of 0.60);

and

WHEREAS, the proposed enlargement will maintain the two non-complying 0'-11" side yards (one side yard of 8'-0" is required); and

WHEREAS, the enlargement will maintain the complying front yard of 12'-0" (a minimum front yard of 10'-0" is required) and rear yard of 48'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, although the side yards will remain the same, the proposed enlargement will increase the degree of non-compliance because the encroachments will be within the non-complying yards; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the narrow width of the site and (2) the existing non-complying side yards; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which showed that out of approximately 116 lots within the radius, only four are 20 feet wide and the subject site is the only one with a width of 20 ft. within the R3A zoning district; and

WHEREAS, the Board notes that the majority of lots within the radius diagram have widths greater than 30 ft.; and

WHEREAS, the applicant notes that the two existing 0'-11" side yards create additional obstacles to constructing an enlargement in compliance with relevant zoning regulations in that a complying enlargement would be 12 ft. in width, so narrow that it would be unusable; and

WHEREAS, the Board finds that the aforementioned unique physical conditions create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that a complying enlargement using available floor area would be habitable; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the bulk of the proposed building is consistent with the surrounding one- and two-family two-story residences; and

WHEREAS, the applicant notes that the existing home has an attic, and, therefore the addition of a second floor will only increase the height by four feet, from 21'-0" to 25'-0"; and

WHEREAS, the Board notes that the proposed height is within the permitted parameters of the zoning district; and

WHEREAS, moreover, the Board notes that the requested FAR increase to 0.66, ten percent more than the district allows, is within the guidelines of ZR § 73-621, a special permit that would allow a ten percent increase in floor area; and

WHEREAS, however, the special permit does not

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allow development within non-complying side yards; and

WHEREAS, further, the applicant asserts that any impact is minimized because the non-complying side yards already exist and there is a driveway to the west of the home which provides open space; and

WHEREAS, however, at hearing, in response to the neighbors' concerns and in order to provide a higher degree of privacy, the Board directed the applicant to stagger the second floor windows on both sides of the home so that none of them directly faced the windows of the adjacent homes; and

WHEREAS, in response, the applicant relocated the windows on the second floor so that they are aligned with the exterior wall space between the windows of the adjacent homes rather than directly facing the windows; and

WHEREAS, the Board found this change acceptable and it is reflected on the new plans; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the applicant relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side yards and floor area, contrary to ZR §§ 23-141, 23-461, and 54-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 27, 2007" – (3) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.66; a floor area of 1,320 sq. ft.; two side yards of 0'-11"; a front yard of 12'-0"; and a rear yard of 48'-0";

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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**177-85-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, for 2025 Richmond Avenue LLC, owner.

SUBJECT – Application October 28, 2006 – Extension of Term and waiver of the rules for a Variance, granted on August 12, 1986 to permit in an R3-2 zoning district a two story building for use as a retail establishment and business offices (UG6) which does not conform with the use regulations.

PREMISES AFFECTED – 2025 Richmond Avenue, east side of Richmond Avenue, 894.75' north of Rockland Avenue, Block 2015, Lot 48, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 10 A.M., for continued hearing.

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**258-90-BZ**

APPLICANT – Sheldon Lobel, P.C., for John Isikli, owner.

SUBJECT – Application December 13, 2006 – Extension of Time to obtain a Certificate of Occupancy for the operation of a restaurant and banquet hall (UG9) in an R5 zoning district which expired on December 7, 2006.

PREMISES AFFECTED – 2337 Coney Island Avenue, east side, between Avenue T and Avenue U, Block 7315, Lot 73, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 10 A.M., for decision, hearing closed.

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**118-95-BZ, Vol. II**

APPLICANT – Windels Marx Lane & Mittendorf, LLP, for White Castle System, Inc., owner.

SUBJECT – Application April 9, 2007 – Extension of Term of a Special Permit for an accessory drive-through facility, located in an C1-2/R7B zoning district, in conjunction with an (UG6) eating and drinking establishment (White Castle) which expired on July 25, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on June 11, 2002

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and a waiver of the rules of practice and procedure.

PREMISES AFFECTED – 89-03 57<sup>th</sup> Avenue, northeast corner of Queens Boulevard and 57<sup>th</sup> Avenue, Block 1845, Lot 41, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Courtney M. Merriman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 10 A.M., for decision, hearing closed.

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**8-01-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, for Bruno Savo, owner.

SUBJECT – Application October 20, 2006 – Extension of Time to complete construction to a previously granted Variance (§72-21) for the construction of a single family home on a lot with less than the lot width which expired on December 18, 2005; and an amendment to the off street parking requirement to comply with provisions in an R32(LDGM) zoning district.

PREMISES AFFECTED – 352 Clifton Avenue, south side of Clifton Avenue, 125’ east of Reynolds Street, Block 2981, Lot 7, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Sarem Ozdusal.

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 10 A.M., for continued hearing.

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**201-02-BZ**

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application April 18, 2007 – Request for a waiver of Practice and Procedure and for an extension of time to complete construction and to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 6778 Hylan Boulevard, southeast corner of Page Avenue, Block 7734, Lots 13 & 19, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 10 A.M., for decision, hearing closed.

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**217-06-A**

APPLICANT – Eric Palatnik, P.C., for Yee Kon, LLC, owner.

SUBJECT – Application August 28, 2006 – Proposed construction of a daycare center which extends into the bed of a mapped street (Francis Lewis Blvd)contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard aka 196-23 42<sup>nd</sup> Street, north side of the intersection of Francis Lewis Boulevard and 42<sup>nd</sup> Avenue, Block 5361, Lot 10, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Appeal granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 2, 2006, acting on Department of Buildings Application No. 402430231, reads in pertinent part:

“Proposed application to build in the bed of a mapped street requires approval from the New York City Board of Standards and Appeals pursuant to GCL Section 35.”; and

WHEREAS, a public hearing was held on this application on April 24, 2007 after due notice by publication in the *City Record*, and then to decision on May 8, 2007; and

WHEREAS, by letter dated February 21, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated January 9, 2007, the Department of Environmental Protection (DEP) states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated March 19, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, Community Board 11, Queens, submitted a letter in opposition to this application, citing concerns about potential impacts on traffic and children’s safety while being dropped off at the site or at the adjacent school; and

WHEREAS, City Council Member Tony Avella submitted a letter in opposition to this application, citing the same concerns as the Community Board; and

WHEREAS, the Board reviewed these concerns, but notes that the proposed use is permitted as of right, and all regulations including bulk and parking as well as Building Code requirements must be complied with; and

WHEREAS, further, the Board notes that DOT reviewed the application, both within the context of its proposed capital

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plans and for traffic safety, and did not have any objections; and

WHEREAS, after the hearing was closed, the Community Board, State Senator Frank Padavan, City Council Member Tony Avella, the Auburndale Improvement Association, and certain community members requested that the Board re-open the hearing to permit them to provide comment since they were not notified of the hearing; and

WHEREAS, the Board has reviewed this request, and notes that for appeals made under the General City Law Section 35, its Rule §1-07(e) requires only that the Board submit a copy of the application to the Community Board, DEP, DOT, and FDNY; and

WHEREAS, further, the Board notes that the rules do not require notification for hearing; and

WHEREAS, the Board has reviewed written testimony from the Community Board and Council Member Avella submitted into the record; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated August 2, 2006, acting on Department of Buildings Application No. 402430231, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 3, 2007"-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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**17-07-BZY**

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., d/b/a Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2/NA-2. Zoning District.

PREMISES AFFECTED – 421 West 250<sup>th</sup> Street, Grosvenor Avenue and Goodridge Avenue, Block 5831, Lot

10, Borough of Bronx.

**COMMUNITY BOARD #8BX**

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, one single-family dwelling currently under construction at the subject premises; and

WHEREAS, the applicant has also brought separate applications, under BSA Cal. Nos. 18-07-BZY, 19-07-BZY, and 20-07-BZY thru 31-07-BZY, for 14 additional homes to be constructed at the site; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is part of an approximately 15-acre site known as Chapel Farm and is located at the intersection of Grosvenor Avenue and Islelin Avenue; and

WHEREAS, the premises is currently located within an R1-2 zoning district within Special Natural Area District 2 (SNAD); and

WHEREAS, the development complies with a prior version of the SNAD regulations; and

WHEREAS, however, on February 2, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt a text amendment, which affected the SNAD regulations and resulted in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for the home and had completed and backfilled 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a "minor

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development”; and

WHEREAS, for “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 200805655-01 NB, (hereinafter, the “New Building Permit”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and has been timely renewed; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an

application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

*WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes site preparation, rock removal, excavation, 100 percent of the foundation work, and partial decking and framing; and*

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing rock clearance, excavation, completed foundations, and partial framing; affidavits from the contractor and engineer; financial records; and copies of cancelled checks; and

WHEREAS, further, the applicant notes that work on the infrastructure that will benefit all 15 of the homes within the major development and the minor developments has been completed; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the construction of the home is \$784,000, or 28 percent, out of the \$2,811,000 cost to complete; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, the applicant stated that because of the complexity of the work, including extensive infrastructure for the entire site, more than two years may be needed to complete

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the development; and

WHEREAS, the Board notes that ZR § 11-332 limits the amount of time it may grant for extensions to complete construction for a minor development to two terms of not more than two years; and

WHEREAS, the Board recognizes that the scope of work remaining may require additional time to complete, beyond the two years authorized by ZR § 11-332, and agreed to review any subsequent request for an extension of time and determine whether it is appropriate to approve by letter; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to, ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 200805655-01 NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 8, 2009.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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## 18-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., d/b/a Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§ 11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2/NA-2. Zoning District.

PREMISES AFFECTED – 5000 Iselin Avenue, Grosvenor Avenue and Goodridge Avenue, Block 5831, Lot 20, Borough of Bronx.

## COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, one single-family dwelling currently under construction at the subject premises; and

WHEREAS, the applicant has also brought separate applications, under BSA Cal. Nos. 17-07-BZY, 19-07-BZY, and 20-07-BZY thru 31-07-BZY, for 14 additional homes to be constructed at the site; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in

*The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is part of an approximately 15-acre site known as Chapel Farm and is located at the intersection of Grosvenor Avenue and Islelin Avenue; and

WHEREAS, the premises is currently located within an R1-2 zoning district within Special Natural Area District 2 (SNAD); and

WHEREAS, the development complies with a prior version of the SNAD regulations; and

WHEREAS, however, on February 2, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt a text amendment, which affected the SNAD regulations and resulted in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for the home and had completed and backfilled 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or

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development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 200805539-01 NB, (hereinafter, the “New Building Permit”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and has been timely renewed; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

*WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes site preparation, rock removal, excavation, 100 percent of the foundation work, and partial decking and framing; and*

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing rock clearance, excavation, completed foundations, and partial framing; affidavits from the contractor and engineer; financial records; and copies of cancelled checks; and

WHEREAS, further, the applicant notes that work on the infrastructure that will benefit all 15 of the homes within the major development and the minor developments has been completed; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the construction of the home is \$591,000, or 21 percent, out of the \$2,811,000 cost to complete; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, the applicant stated that because of the complexity of the work, including extensive infrastructure for the entire site, more than two years may be needed to complete the development; and

WHEREAS, the Board notes that ZR § 11-332 limits the amount of time it may grant for extensions to complete construction for a minor development to two terms of not more than two years; and

WHEREAS, the Board recognizes that the scope of work remaining may require additional time to complete, beyond the two years authorized by ZR § 11-332, and agreed to review any subsequent request for an extension of time and determine whether it is appropriate to approve by letter; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to, ZR § 11-332.

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit No. 200805539-01 NB, as well as all related permits for various

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work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 8, 2009.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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## 19-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., d/b/a Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2/NA-2. Zoning District.

PREMISES AFFECTED – 5020 Iselin Avenue, Grosvenor Avenue and Goodridge Avenue, Block 5831, Lot 30, Borough of Bronx.

## COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Application granted.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, one single-family dwelling currently under construction at the subject premises; and

WHEREAS, the applicant has also brought separate applications, under BSA Cal. Nos. 17-07-BZY, 18-07-BZY, and 20-07-BZY thru 31-07-BZY, for 14 additional homes to be constructed at the site; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is part of an approximately 15-acre site known as Chapel Farm and is located at the intersection of Grosvenor Avenue and Iselin Avenue; and

WHEREAS, the premises is currently located within an R1-2 zoning district within Special Natural Area District 2 (SNAD); and

WHEREAS, the development complies with a prior version of the SNAD regulations; and

WHEREAS, however, on February 2, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt a text amendment, which affected the SNAD regulations and resulted

in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for the home and had completed and backfilled 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued

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prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.";

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 200805548-01 NB, (hereinafter, the "New Building Permit"); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and has been timely renewed; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

*WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permits includes site preparation, rock removal, excavation, and 100 percent of the foundation work; and*

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing rock clearance, excavation, and completed foundations; affidavits from the contractor and engineer; financial records; and copies of cancelled checks; and

WHEREAS, further, the applicant notes that work on the infrastructure that will benefit all 15 of the homes within the major development and the minor developments has been completed; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the construction of the home is \$393,000, or 14 percent, out of the \$2,811,000 cost to complete; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, the applicant stated that because of the complexity of the work, including extensive infrastructure for the entire site, more than two years may be needed to complete the development; and

WHEREAS, the Board notes that ZR § 11-332 limits the amount of time it may grant for extensions to complete construction for a minor development to two terms of not more than two years; and

WHEREAS, the Board recognizes that the scope of work remaining may require additional time to complete, beyond the two years authorized by ZR § 11-332, and agreed to review any subsequent request for an extension of time and determine whether it is appropriate to approve by letter; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to, ZR § 11-332.

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit No. 200805548-01 NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 8, 2009.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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## **28-05-A**

APPLICANT – Alex Ng

OWNER OF PREMISES: Bill Petit

SUBJECT – Application February 17, 2005 – Appeal seeking to challenge the Department of Building's determination that a fenced refuse area in any yard or open space does not violate any Building Code or Zoning Resolution.

PREMISES AFFECTED – 72-02 Ridge Boulevard, a/k/a Flag Court, Block 5906, Lot 18, Borough of Brooklyn.

## **COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Alex Ng, Santa L. El. Dada and Ingrid Farrell.

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For Administration: Angelina Martinez-Rubio, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

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## 232-06-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Sunset Park, LLC, owner.

SUBJECT – Application September 11, 2006 – Proposed two family dwelling that does not front on a legally mapped street contrary to Article 3, Section 36 of the General City Law. R3-1 Zoning District.

PREMISES AFFECTED – 28 Sand Court, South side of Sand Court, 157 feet west of Father Capodanno Boulevard, Block 3122, Lot 213, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD** – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

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## 300-06-A

APPLICANT – Eric Palatnik, P.C., for Tony Wan Yiu Cheng, owner.

SUBJECT – Application November 14, 2006 – Proposed construction of a 4 story mixed use building which extends into the mapped street (44<sup>th</sup> Avenue) which is contrary to Section 35 of the General City Law. C2-5/R6-B zoning district.

PREMISES AFFECTED – 43-17 104<sup>th</sup> Street, north side of the corner formed by the intersection of 44<sup>th</sup> Street and 104<sup>th</sup> Avenue, Block 1987, Lot 67, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 19, 2007, at 10 A.M., for continued hearing.

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## 317-06-A

APPLICANT – John Dydland-NYCDEP, for Department of Environmental Protection, owner.

SUBJECT – Application December 7, 2006 – Proposed construction of a Groundwater Remediation System at a NYCDEP owned site (Station 24) which is located in the bed of mapped street 109th Avenue which is contrary to General City Law Section 35 .R3X Zoning District.

PREMISES AFFECTED – 180<sup>th</sup> Street and 106<sup>th</sup> Road, premises is situated at the following intersections – 176<sup>th</sup>

Street and 109<sup>th</sup> Avenue and Fern Place, 177<sup>th</sup> Street and Watson, Block 10343, Lots 300, 32, 12, 1, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Donald K. Cohen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 10 A.M., for decision, hearing closed.

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## 320-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for Furman LLC, owner.

SUBJECT – Application December 11, 2006 – An appeal challenging DOB's interpretation of their DOB Memo 9/21/86 in which compliance with the special provisions of §23-49 (a) & (c) are applicable to the current design of the proposal when the party walls are utilized or shared for 50% or more of the depth of the building. R5 zoning district.

PREMISES AFFECTED – 4368 Furman Avenue, between East 236<sup>th</sup> and East 237<sup>th</sup>, Block 5047, Lot 12, Borough of Bronx.

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to June 5, 2007, at 10 A.M., for adjourned hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

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**REGULAR MEETING  
TUESDAY AFTERNOON, MAY 8, 2007  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown and Commissioner Hinkson.  
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## ZONING CALENDAR

### 302-05-BZ

#### CEQR #06-BSA-023K

APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.

SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR §32-14 (use), §33-121 (FAR), §101-721 and §101-41(b) (street wall height), §101-351 (curb cut), and §35-24 (setback).

PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100’ east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.

#### COMMUNITY BOARD #2BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Application withdrawn.

**THE VOTE TO WITHDRAW** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

Adopted by the Board of Standards and Appeals, May 8, 2007.  
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### 49-06-BZ

#### CEQR #06-BSA-066K

APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.

SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking. Parking for 12 vehicles in the cellar is proposed. The existing one-story structure consisting of approximately 2,600 SF will be demolished.

PREMISES AFFECTED – 2041 Flatbush Avenue, at the intersection of Flatbush Avenue and the eastern side of Baughman Place. Block 7868, Lot 18, Borough of Brooklyn.

#### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 7, 2006, acting on Department of Buildings Application No. 301997258, reads, in pertinent part:

- “1. Proposed FAR is contrary to ZR 33-121
2. Proposed parking is contrary to ZR 36-21.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C1-2 (R3-2) zoning district, the proposed construction of a two-story commercial building, which does not comply with applicable zoning requirements concerning FAR and parking, contrary to ZR §§ 33-121 and 36-21; and

WHEREAS, the building, will have a total floor area of 7,352 sq. ft. (1.42 FAR) (5,181 sq. ft. of floor area and an FAR of 1.0 are the maximum permitted), a complying street wall and total height of 24 feet (without bulkhead), and eight parking spaces (25 are required); and

WHEREAS, the Board notes that the application as originally filed contemplated a three-story building, with the same waivers as indicated above, but also with a higher degree of non-compliance as to floor area and FAR (11,636 sq. ft. of floor area and an FAR of 2.25 were initially proposed); and

WHEREAS, additionally, the applicant initially requested a height and setback waiver because a three-story building with a street wall and total height of 33’-2” was proposed (a building with a street wall height of 30 feet or two stories is the maximum permitted); and

WHEREAS, the applicant initially proposed 12 parking spaces, and 39 were required under the original scenario; and

WHEREAS, as discussed in greater detail below, the Board expressed concerns about the project as originally proposed, primarily because there was not a clear justification that the alleged unique physical conditions created the need for such significant FAR, street wall and setback, and parking waivers; and

WHEREAS, a public hearing was held on this application on September 19, 2006, after due notice by publication in the *City Record*, with continued hearings on October 31, 2006, November 21, 2006, January 9, 2007, February 27, 2007, and April 10, 2007, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject premises is located on the southeast corner of Flatbush Avenue and Baughman Place, within a C1-2 (R3-2) zoning district; and

WHEREAS, the site has a nearly triangular shape with

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approximately 123 feet of frontage on Baughman Place, and approximately 87 feet of frontage on Flatbush Avenue; and

WHEREAS, the site has a lot area of 5,181 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story automotive repair station, which will be demolished in anticipation of the new building; and

WHEREAS, the site is the subject of a prior Board action, under BSA Cal. No. 312-51-BZ, which permitted the reconstruction of a gasoline service station and lubritorium at the site; that grant was subsequently amended to include automotive repairs; and

WHEREAS, the Board notes that the proposed use would eliminate a non-conforming use and replace it with a conforming use that is more compatible with the surrounding uses; and

WHEREAS, the applicant states that the proposed first floor will be occupied by retail use and the second floor will be occupied by commercial office use; the cellar will be occupied by parking; and

WHEREAS, as noted above, however, the proposed building requires certain waivers; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying building: (1) the site is small and irregularly shaped; and (2) the history of development at the site; and

WHEREAS, as to size and shape, the applicant states that the triangular shape causes two immediate problems: (1) the sharply-angled lot and pinched interior of the site require the building to have a high ratio of perimeter wall to floor area, which results in premium construction costs; and (2) irregularly-shaped and inefficient floor plates compromise the amount of usable space for office use and parking; and

WHEREAS, the Board agrees that the size and the shape of the site are unique, and that constraints are placed on an as of right development; and

WHEREAS, the applicant also notes that the small size of the lot makes it impractical to comply with the parking requirement while still providing a reasonable site plan and layout for uses on the first floor; and

WHEREAS, as to the historic use at the site, the applicant states that the existing one-story automotive repair shop is obsolete and does not provide a reasonable return on the site; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed an as of right residential alternative; and an as of right commercial alternative, with the required parking; and

WHEREAS, the applicant also analyzed the original non-complying three-story commercial alternative; and

WHEREAS, the study concluded that neither complying

scenario would realize a reasonable return, since a complying building would have compromised and inefficient floor plates; and

WHEREAS, the Board directed the applicant to examine a two-story commercial alternative, as discussed below, which provided a greater degree of compliance; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the area is occupied by residential uses, mixed-use buildings, showrooms, automobile-related uses, and other commercial uses; and

WHEREAS, the applicant notes that the proposed height is compatible with adjacent residential buildings including a four-story multi-family building to the east and a two-story commercial building to the south; and

WHEREAS, further, the applicant represents that there is a four-story multi-family building and a three-story school located across Flatbush Avenue; and

WHEREAS, the Board notes that the current proposal respects the height and street wall requirements of the subject zoning district; and

WHEREAS, accordingly, in terms of its bulk, the current proposal is even more contextual with the surrounding neighborhood than the original proposal, which required waivers of height and setback; and

WHEREAS, the Board observes that, although the required parking is not being provided, the following measures are provided to help mitigate any parking impact: (1) the existing expansive curb cuts on Flatbush Avenue and curb cut near the intersection on Baughman Place will be eliminated and replaced by a single curb cut further from the intersection on Baughman Place; and (2) the applicant is working with the Department of Transportation to recapture the street frontage currently occupied by existing curb cuts for a potential gain of nine on-street parking spaces; and

WHEREAS, finally, the Board notes that after reducing the amount of floor area and FAR, the applicant significantly reduced the number of parking spaces required, from 39 to 25; and

WHEREAS, thus, since eight off-street parking spaces will be provided, and nine may be recaptured on-street, the total made available through the redesign of the site will be approximately 17 out of the required 25; and

WHEREAS, the Board further notes that the elimination of the wide curb cut on Flatbush Avenue generally improves the site conditions and impact on the street; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development

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of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the pre-existing size and shape of the lot; and

WHEREAS, in addition to the two complying scenarios discussed above, the applicant also analyzed its initial proposal, of 2.25 FAR and 11,636 sq. ft., which required waivers for street wall height, setback, FAR, floor area, and parking; and

WHEREAS, the applicant concluded that although this scenario would also not realize a reasonable return, the owner required the additional floor area; and

WHEREAS, however, the Board expressed concern about (1) the excessive FAR, (2) the inefficient layout of the building which potentially increased costs, and (3) the insufficiency of 12 parking spaces to satisfy the parking demand for a building of that size (39 spaces were required under that scenario); and

WHEREAS, as noted above, the Board did not view the initial proposal as the minimum variance; and

WHEREAS, because the applicant modified the proposed building to the current version, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06-BSA-066K, dated March 17, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within a C1-2 (R3-2) zoning district, the proposed construction of a two-story commercial building,

which does not comply with applicable zoning requirements concerning FAR and parking, contrary to ZR §§ 33-121 and 36-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 1, 2007"- (7) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: floor area of 7,352 sq. ft. (1.42 FAR), a wall and total height of 24 feet (without bulkhead), and eight parking spaces, as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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## **79-06-BZ**

### **CEQR #06-BSA-080K**

APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.

SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building on a vacant site located in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246' east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.

### **COMMUNITY BOARD #8BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 13, 2006, acting on Department of Buildings Application No. 302145578, reads in pertinent part:

"Proposed Use Group 2 residential building is not permitted in an M1-1 zoning district as per Sec. 42-00 Z.R."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a five-story residential building, which is contrary to ZR § 42-00; and

WHEREAS, the proposed building will have a total floor area of 7,698 sq. ft. (2.20 FAR); a street wall height of 37'-4";

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a total height of 46'-8", without bulkheads, and 55'-4", with bulkheads; a rear yard of 30'-0"; and nine dwelling units (the "Proposed Building"); and

WHEREAS, a public hearing was held on this application on January 9, 2007 after due notice by publication in the *City Record*, with continued hearings on February 13, 2007, March 13, 2007, and April 10, 2007, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 8, Brooklyn, recommends disapproval of the application, citing concerns about a lack of affordable housing in the community and the displacement of current neighborhood residents; and

WHEREAS, City Council Member Letitia James submitted a letter in opposition to the application, citing the same concerns as the Community Board; and

WHEREAS, the site is located on the north side of Bergen Street, between Classon Avenue and Franklin Avenue, within an M1-1 zoning district; and

WHEREAS, the site comprises two tax lots, lots 85 and 86, which have been under common ownership and have been merged into the zoning lot known as Lot 85; and

WHEREAS, the site has a total width of 42 feet and a depth which is 65 feet on the eastern portion of the site (tax lot 85) and 100 feet on the western portion of the site (tax lot 86), and a lot area of 3,500 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building will provide for two dwelling units on each of the first through fourth floors, and one dwelling unit on the fifth floor; and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, the instant variance applicant for use was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small; (2) the site has a shallow depth; and (3) the historic use of the site; and

WHEREAS, as to the size of the site, the combined lot area of the two tax lots is only 3,500 sq. ft.; and

WHEREAS, as to the depth of the eastern portion of the site, the applicant represents that the depth is only 65 feet for that half of the site; and

WHEREAS, the applicant represents that the small size and shallow depth results in conditions that could not accommodate a modern conforming use; and

WHEREAS, as to the uniqueness of this condition, the land use maps show that there are no other vacant sites within the radius with a depth as shallow as 65 feet; and

WHEREAS, the applicant represents that any other sites with a similar small size are already occupied by residential use; and

WHEREAS, further, the applicant represents that of the nine lots in the surrounding area used for industrial use, only

one has a lot area of even less than 5,000 sq. ft., and it is still larger than the subject 3,500 sq. ft. site; and

WHEREAS, as to the historic use of the site, the applicant represents that from at least 1888 until 1951, there was a residential use at the site; and

WHEREAS, additionally, records show that from since at least 1963, the site has been vacant; and

WHEREAS, the Board observes that the two tax lots are small when viewed individually, but are also small when viewed as one merged zoning lot; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming industrial building; and

WHEREAS, the applicant concluded that the conforming scenario would not realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is a mix of residential, commercial, and manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including adjacent residential buildings, those across the street, and others on the subject block; and

WHEREAS, as to the character of the neighborhood, the applicant provided a 400-ft. radius land-use diagram which shows that of the 76 improved lots within the radius, 54 are occupied by residential uses; and

WHEREAS, there are residential uses on both sides of the subject site; and

WHEREAS, the applicant represents that the adjacent sites which are occupied by conforming uses already adjoin lots with residential buildings, so the impact of the proposed use is minimized; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of nine dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

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WHEREAS, the Board has reviewed the comments of the Community Board and Council Member James but notes that the requirement for affordable housing is not within its jurisdiction; and

WHEREAS, further, the Board notes that the proposed building fits within the parameters for a Quality Housing building on a narrow street and would be permitted as of right within the R6 zoning district mapped directly across Bergen Street from the site; and

WHEREAS, the Board also notes that nearby residential uses are characterized by three- and four-story multi-unit buildings, including two adjacent four-story buildings to the west and two adjacent three story buildings to the east; there is also a five-story building along Classon Avenue; and

WHEREAS, in order to minimize any impact of the partial fifth floor, the Board directed the applicant to set the fifth floor back 15 feet from the front property line, rather than the nine feet initially proposed; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed a setback of only nine feet above the fourth floor in the front; and

WHEREAS, in response to the Board's concerns, the applicant proposed the current version of the building, which the Board finds acceptable; and

WHEREAS, the Board also directed the applicant to analyze two four-story alternatives: (1) a building which accommodated the same 2.20 FAR, but with an increased building footprint and (2) a building which accommodated 1.80 FAR on the proposed footprint; and

WHEREAS, the applicant determined that neither alternative resulted in a reasonable return; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA080K, dated September 18, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land

Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: December 6, 2006 EAS, the November 2005 Phase I Environmental Site Assessment Report; and the November 6, 2006 and May 4, 2007 Air Quality and Noise response submissions; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials, Air Quality; and Noise; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on May 3, 2007 and submitted for proof of recording on May 8, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, a five-story residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 22, 2007" –(6) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: five stories; a total floor area of 7,698 sq. ft. (2.20 FAR); a street wall height of 37'-4"; a total height of 46'-8", without bulkheads, and 55'-4", with bulkheads; a rear yard of 30'-0"; and nine dwelling units, all as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as

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site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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## 136-06-BZ

### CEQR #06-BSA-106K

APPLICANT – Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT – Application June 29, 2006 – Zoning variance under §72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§42-00), FAR (§43-12), and rear yard (§43-26 and §43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7, 8, 9, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Kenneth Fisher.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 4, 2007, acting on Department of Buildings Application No. 301564162, reads, in pertinent part:

1. The proposed conversion and enlargement of an existing manufacturing building to a residential use when located in a M2-1 zoning district is contrary to Section 42-10 of the Zoning Resolution.

2. The existing building is a non-complying structure in that it exceeds the maximum allowable Floor Area Ratio of 2.0 permitted under Section 43-12 of the Zoning Resolution. As such, the addition of the fifth floor will constitute an increase in degree of non-compliance contrary to Section 54-31 of the Zoning Resolution.

3. The proposed residential enlargement of the fifth floor with a rear yard of less than 20 feet is contrary to Section 43-26 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M2-1 zoning district within the Fulton Ferry Historic District, the residential conversion and one-story enlargement of three adjacent four-story buildings, with ground floor retail and 15 dwelling units, which is contrary to ZR §§ 42-10, 43-12, 43-26, and 54-31; and

WHEREAS, a public hearing was held on this application on February 13, 2007, after due notice by publication in the *City Record*, with a continued hearing on March 20, 2007, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the north side of Old Fulton Street, between Front Street and Water Street, within an M2-1 zoning district; and

WHEREAS, the site comprises three tax lots (Lots 7, 8, and 9) and has a total lot area of 5,770 sq. ft.; the tax lots are proposed to be merged into a single zoning lot, tentatively Lot 9; and

WHEREAS, from east to west, tax lot 7 has a depth ranging from 76 feet to 90 feet; tax lot 8 has a depth of 106 feet; and tax lot 9 has a depth of approximately 60 feet; and

WHEREAS, each lot is occupied by a four-story building and the buildings are separated by party walls; and

WHEREAS, the applicant proposes to retain the existing buildings which are currently vacant; and

WHEREAS, the applicant proposes to demolish portions of the second, third, and fourth floors at the rear of the buildings on tax lots 7 and 8 and to retain only the first floor of those portions; and

WHEREAS, further, the applicant proposes to construct a partial fifth floor, which will be setback 28 feet from the street line at the eastern side of the property and 29'-6" from the street line at the western side of the property; and

WHEREAS, the proposed building will have a total floor area of 22,948 sq. ft. (3.98 FAR), a residential floor area of 17,562 sq. ft. (3.08 FAR), a commercial floor area of 5,237 sq. ft. (0.90 FAR), a height ranging from 42'-7" at the west to 44'-5" at the east before the setback, due to a slope, and a total height ranging from 51'-7" at the west to 52'-11" at the east,

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without bulkheads; and

WHEREAS, the cellar level will be occupied by commercial use and mechanicals; and

WHEREAS, the first floor will be occupied by retail use (UG 6) and a small residential entrance; and

WHEREAS, the second and third floors will each be occupied by five residential units; the fourth floor will be occupied by five residential duplex units, three of which will be duplexes with space on the fifth floor and a fourth unit will have access to outdoor space on the fifth floor; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small; (2) the site is irregularly-shaped; and (3) the existing historic buildings are obsolete and cannot accommodate a conforming use; and

WHEREAS, as to the size, the applicant represents that tax lot 9 is considered a shallow interior lot pursuant to ZR § 23-52; and

WHEREAS, further, tax lot 9 also has a width of only approximately 21'-4"; tax lot 8 has a width of 25'-0"; and tax lot 7 has a width of 24'-0"; and

WHEREAS, as noted above, the tax lots also have depths ranging from 60'-2" at the western property line to 106'-0" at a small triangular point in the middle, which creates a jagged rear lot line; and

WHEREAS, as to the site's shape, tax lots 7 and 8 have a rectangular shape, like tax lot 9 at the street frontage, but they come to a sharp angle along their rear lot lines; and

WHEREAS, individually, the three lots have small size and irregular shape, but even as a merged zoning lot, it is small (5,000 sq. ft.) and irregularly-shaped, and cannot support a conforming use; and

WHEREAS, as to the historic use of the buildings, the applicant represents that the buildings are at least 150 years old and historic records reflect that the buildings were originally built for local retail on the ground floor and residential use above and were not designed for commercial uses, exclusively; and

WHEREAS, further, records show that the westernmost building (on tax lot 9) was occupied by a commercial use on the first floor and residential uses above; records show that the other two buildings may have existed even prior to the 1820s and were occupied by commercial and industrial uses, and a hotel at various times; and

WHEREAS, the applicant represents that in recent years, the buildings, which are within between 50 and 75 feet of the Brooklyn Bridge, have been largely vacant or used for storage; and

WHEREAS, the applicant asserts that although there has been some historic conforming use at the site, the buildings are not viable for modern manufacturing uses, which require large unobstructed floor plates, truck access, and greater ceiling heights; and

WHEREAS, as to the obsolescence, the applicant states that the buildings cannot accommodate loading docks and do not have elevator space large enough for freight; and

WHEREAS, the floor plates, even of a combined building, are too small for manufacturing use and the two small openings between the buildings of approximately five feet in diameter that connect the three buildings cannot be enlarged without great cost because they penetrate load-bearing walls; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right commercial building and a mixed-use residential/commercial use without a penthouse; and

WHEREAS, the applicant concluded that such scenarios would result in a loss, due to the unique conditions of the site; and

WHEREAS, the applicant represents that the partial fifth floor is required to make the project feasible, particularly with the demolition and loss of floor area at the rear portion of the building; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, the applicant states that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 15 dwelling units and ground floor retail will not impact any nearby conforming uses; and

WHEREAS, further, the applicant represents that the area now known as the Fulton Ferry Historic District was characterized by residential use until the Brooklyn Bridge was built; and

WHEREAS, specifically, the applicant represents that the row of buildings on Old Fulton Street, from numbers 7 through 23 were all designed for commercial use on the ground floor and residential use on the floors above at about the same time; the applicant represents that many of them have continually been used for those purposes; and

WHEREAS, additionally, across the street from the site is a large nine-story building occupied by residential use; and

WHEREAS, the applicant represents that sound attenuation measures will be followed in order to minimize any impact due to the proximity to the Brooklyn Bridge; and

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WHEREAS, the proposed demolition at the rear of the building will increase the depth of the rear yard and the amount of open space; and

WHEREAS, additionally, the applicant represents that the partial-fifth floor will be setback above the fourth floor so as to minimize its visibility from the street; and

WHEREAS, the applicant proposes to restore the facades to be in keeping with their historic character; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission, dated February 15, 2007; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board observes that the proposed building of 15 dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the Board notes that the proposed net increase in floor area and FAR is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA106K, dated June 29, 2006 and an EAS addendum for potential noise impacts dated April 23, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a June, 2006 Environmental Assessment Statement, (2) an April, 2007 EAS addendum for potential noise impacts and (3) a July, 2002 Phase I Environmental Site Assessment; and

WHEREAS, these submissions specifically examined the proposed action for potential impacts for hazardous materials, noise and air quality; and

WHEREAS, a Restrictive Declaration was executed on April 20, 2007 and recorded on April 25, 2007 for the subject property to address hazardous materials concerns; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an M2-1 zoning district within the Fulton Ferry Historic District, the residential conversion and one-story enlargement of three adjacent four-story buildings, with ground floor retail and 15 dwelling units, which is contrary to ZR §§ 42-10, 43-12, 43-26, and 54-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 23, 2007" – thirteen (13) sheets and "Received May 1, 2007" – one (1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: five stories; a total floor area of 22,948 sq. ft. (3.98 FAR); a residential floor area of 17,562 sq. ft. (3.08 FAR); a commercial floor area of 5,237 sq. ft. (0.90 FAR); an average street wall height of 46.7 feet; and an average total height of 53.7 feet, without bulkheads;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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**14-07-BZ  
CEQR #07-BSA-053M**

APPLICANT – Ivan Khoury, Esq., for Green Tea Inc., owner; Da Spa, LLC, dba Delluva Day Spa, lessee.  
SUBJECT – Application January 11, 2007 – Special Permit (§73-36) to legalize a PCE (spa) located in the Tribeca West Historic District and a M1-5 zoning district. The proposal is

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contrary to §42-10.

PREMISES AFFECTED – 152 Franklin Street, 150.33’ east of the intersection of Franklin and Hudson Streets, Block 189, Lot 7506, Borough of Manhattan.

**COMMUNITY BOARD #1M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 12, 2006, acting on Department of Buildings Application No. 104556464, reads in pertinent part:

“Proposed use of physical cultural establishment in Manufacturing district M1-5 at first floor is contrary to ZR 42-10- (uses permitted as of right).”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district, within the Special Tribeca Mixed Use District, the legalization of a physical culture establishment (PCE) on the first floor and a portion of the cellar level of an existing seven-story mixed-use residential/commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on April 10, 2007 after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Franklin Street, between Varick Street and Hudson Street; and

WHEREAS, the site is occupied by a seven-story mixed-use residential/commercial building; and

WHEREAS, the PCE occupies 2,369 sq. ft. of floor area on the first floor and 1,285 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE, which is operated under the name Delluva Day Spa, began operations at the site on January 26, 2007; and

WHEREAS, the applicant represents that the PCE offers spa treatments including facial massages, hydrotherapy, and other beauty and skin care services; and

WHEREAS, the proposed hours of operation are: Monday through Wednesday, 9:00 a.m. to 7:00 p.m.; Thursday 8:00 a.m. to 8:00 p.m.; Friday and Saturday, 8:00 a.m. to 9:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA053M, dated March 24, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district, within the Special Tribeca Mixed Use District, the legalization of a physical culture establishment on the first floor and a portion of the cellar level of an existing seven-story mixed-use residential/commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 27, 2007”- (3) sheets and *on further condition*:

THAT the term of this grant shall expire on January 26, 2017;

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THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Wednesday, 9:00 a.m. to 7:00 p.m.; Thursday 8:00 a.m. to 8:00 p.m.; Friday and Saturday, 8:00 a.m. to 9:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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## **41-07-BZ**

### **CEQR #07-BSA-058M**

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for 17<sup>th</sup> and 10<sup>th</sup> Associates, LLC, owner; Equinox 17<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application February 5, 2007 – Special Permit (§73-36) to permit the proposed PCE on the cellar, ground, and mezzanine levels of a 24-story building under construction. The Premises is located in a C6-3 zoning district and Sub Area 1 of the Special West Chelsea District. The proposal is contrary to §22-00.

PREMISES AFFECTED – 450 West 17<sup>th</sup> Street, a/k/a 100 Tenth Avenue, east side of Tenth Avenue between West 16<sup>th</sup> and West 17<sup>th</sup> Streets, Block 714, Lot 1, Borough of Manhattan.

### **COMMUNITY BOARD #4M**

#### **APPEARANCES –**

For Applicant: Ellen Hay.

**ACTION OF THE BOARD** – Application granted on condition.

#### **THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

#### **THE RESOLUTION:**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 31, 2007, acting on Department of Buildings Application No. 104318908, reads in pertinent part:

“Proposed use of physical culture establishment is not permitted as of right in C6-3 zoning district and within the Special West Chelsea District under section 98-02 ZR. This use is contrary to section 32-10 ZR and requires a special permit from the BSA under section 73-36 ZR.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3 zoning district, within Sub Area I of the Special West Chelsea District, the establishment of a physical culture establishment (PCE) on portions of the cellar, first floor, and mezzanine levels of a proposed 24-story mixed-use residential/commercial building, contrary to ZR §§ 32-10 and 98-02; and

WHEREAS, a public hearing was held on this application on April 10, 2007 after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, on the condition that a special discount be offered to residents occupying the building’s affordable units; and

WHEREAS, the subject site is located on the east side of Tenth Avenue, between West 16<sup>th</sup> Street and West 17<sup>th</sup> Street; the western portion of the site is traversed by the High Line elevated rail line; and

WHEREAS, the site is currently under construction and will be occupied by a 24-story mixed-use residential/commercial building; and

WHEREAS, the PCE will occupy 21,676 sq. ft. of floor space in the cellar, 8,332 sq. ft. of floor area on the first floor and 2,749 sq. ft. of floor area on the first floor mezzanine; and

WHEREAS, the PCE, will be operated as an Equinox fitness club; and

WHEREAS, the applicant represents that the PCE will offer fitness classes, instruction and programs for physical improvement, bodybuilding, weight reduction, aerobics, and massage treatments; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Board has reviewed the Community

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Board's recommendation, however it notes that the PCE's fee schedule is not relevant to the required findings; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA058M, dated February 5, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3 zoning district, within Sub Area I of the Special West Chelsea District, the establishment of a physical culture establishment on portions of the cellar, first floor, and mezzanine levels of a proposed 24-story mixed-use residential/commercial building, contrary to ZR §§ 32-10 and 98-02; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 16, 2007"-(2) sheets and "April 9, 2007"-

(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 8, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; THAT the hours of operation shall be limited to: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2007.

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## 44-07-BZ

### CEQR #07-BSA-061M

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Rubin-Lobo LLC d/b/a Bikram Yoga NY, lessee.

SUBJECT – Application February 8, 2007 – Special Permit (§73-36) to legalize a PCE (Yoga Studio) on a portion of the second floor in a six-story mixed-use building. The Premises is located in a C1-9 zoning district. The proposal is contrary to §32-18.

PREMISES AFFECTED – 171-173 East 83<sup>rd</sup> Street, northwest corner East 83<sup>rd</sup> Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 11, 2007, acting on Department of Buildings Application No. 104506429, reads in pertinent part:

“Proposed Physical Culture Establishment (Yoga Studio) is not permitted as of right in C1-9 zoning district and it is contrary to ZR 32-18.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 zoning district and partially within an R8B zoning district, the legalization of a physical culture establishment (PCE) on a portion of the second floor of an existing six-story mixed-use residential/commercial building, contrary to ZR § 32-18; and

WHEREAS, a public hearing was held on this application on April 10, 2007 after due notice by publication in *The City Record*, and then to decision on May 8, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of East 83<sup>rd</sup> Street and Third Avenue; and

WHEREAS, the site is occupied by a six-story mixed-use residential/commercial building; and

WHEREAS, the PCE occupies 3,679 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE is operated as Bikram Yoga New York; and

WHEREAS, the applicant represents that the PCE offers specialized yoga classes and massage treatments; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 6:00 a.m. to 10:00 p.m.; and Saturday and Sunday, 7:30 a.m. to 8:00 p.m.; and

WHEREAS, at hearing the Board asked the applicant to confirm that the PCE activity was confined to the portion of the site within the C1-9 zoning district; and

WHEREAS, the applicant responded that the PCE use is confined to the eastern portion of the site which is wholly within the C1-9 zoning district and provided a second floor plan reflecting this; and

WHEREAS, additionally, the Board asked the applicant if this use was permitted on the second floor, which is also occupied by a residential use in the western portion of the building; and

WHEREAS, the applicant responded that DOB had approved the location of the use on the second floor and provided documentation supporting this claim; and

WHEREAS, the applicant also provided information reflecting that there has been continuous commercial use for a period of at least 80 years within the PCE space on the second floor; and

WHEREAS, further, the applicant submitted a statement describing the PCE space in relation to the rest of the building program which includes a separate entrance to the second floor, used only by the yoga studio, the absence of any connections between the yoga studio and other uses in the building; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA061M, dated February 2, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use,

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Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 zoning district and partially within an R8B zoning district, the legalization of a physical culture establishment on a portion of the second floor of an existing six-story mixed-use residential/commercial building, contrary to ZR § 32-18; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 23, 2007"- (2) sheets "Received April 20, 2007"- (1) sheet and *on further condition*:

THAT the term of this grant shall expire on May 8, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Friday, 6:00 a.m. to 10:00 p.m.; and Saturday and Sunday, 7:30 a.m. to 8:00 p.m.;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May

8, 2007.

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**65-06-BZ**

APPLICANT – Eric Palatnik, P.C., for Lee Zhen Xiang, owner.

SUBJECT – Application April 11, 2006 – Zoning variance under §72-21 to allow a proposed residential building containing three (3) dwelling units to violate applicable front yard (§23-45(a)) and side yard requirements (§23-462(a)). R5 zoning district.

PREMISES AFFECTED – 72-45 43<sup>rd</sup> Avenue, corner of 43<sup>rd</sup> Avenue and 74<sup>th</sup> Street, Block 1357, Lot 46, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.  
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**98-06-BZ & 284-06-A**

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9<sup>th</sup> Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of the intersection of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 5, 2007, at 1:30 P.M., for continued hearing.  
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**156-06-BZ**

APPLICANT – Alfonso Duarte, for Ally Basheer, owner.

SUBJECT – Application July 13, 2006 – Variance (§72-21) for the legalization to a single family home for the enlargement on the second floor which does not comply with front yard (§23-45) zoning requirements in an R-2 zoning district.

PREMISES AFFECTED – 267-04 83<sup>rd</sup> Avenue, southeast corner of 267<sup>th</sup> Street, Block 8779, Lot 41, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

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For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Laid over to July 10, 2007, at 1:30 P.M., for continued hearing.

## 163-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rokeva Begum, owner.

SUBJECT – Application July 25, 2006 – Variance (§72-21) to permit the proposed construction of two (2), three (3) story, three (3) family buildings on one zoning lot. The proposal is requesting waivers with respect to the open space ratio (23-141c), front yard (23-45), side yards (23-462), and off-street parking (25-22). R5 zoning district.

PREMISES AFFECTED – 72-36 and 72-38 43<sup>rd</sup> Avenue, Block 1354, Lots 25 and 27, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to June 19, 2007, at 1:30 P.M., for continued hearing.

## 253-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Jamila Maleh and Asian Azrak, owners.

SUBJECT – Application September 15, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary side yard (§23-461) and rear yard (§23-47) in an R4 zoning district.

PREMISES AFFECTED – 2243 Homecrest Avenue, east side of Homecrest Avenue between Avenue V and Gravesend Neck Road, Block 7373, Lot 70, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 1:30 P.M., for decision, hearing closed.

## 278-06-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for 871 Bergen Street, LLC, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-21) to permit a four-story residential building on a vacant lot in an M1-1/R6 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 871 Bergen Street, between Classon and Franklin Avenues, Block 1142, Lot 92, Borough of Brooklyn.

### COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Christopher Wright.

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 1:30 P.M., for deferred decision.

## 301-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application November 14, 2006 – Variance (§72-21) for the construction of a two-family dwelling on an existing narrow lot with special provisions for party or side lot line walls that does not provide the minimum required side yard of 8 feet (§23-49) in an R5 zoning district.

PREMISES AFFECTED – 148 Fountain Avenue, west side of Fountain Avenue, 111' north of intersection with Glenmore Avenue, Block 4190, Lot 40, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing

## 302-06-BZ

APPLICANT – Harold Weinberg, P.E., for Mirrer Yeshiva Central Institute, owner.

SUBJECT – Application November 15, 2006 – Variance (§72-21) to permit the construction of a mezzanine and a two-story enlargement over the existing two-story community facility building. The premise is located in a R6 zoning district and the Ocean Parkway Special Zoning District Sub-District. The proposal is contrary to Section 24-11.

PREMISES AFFECTED – 1791 Ocean Parkway, northeast corner Avenue R, north side Avenue R between Ocean Parkway and East 77<sup>th</sup> Street, Block 6663, Lot 46, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, Isidro Figueroa, Michael Casentano and Pinchos Hecht.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2007, at 1:30 P.M., for decision, hearing closed.

## 13-07-BZ

APPLICANT – Jesse Masyr, Wachtel & Masyr, LLP, for Zahav Enterprises, Inc., owner; Unicorp National Development, Inc., lessee.

SUBJECT – Application January 11, 2007 – pursuant to

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§11-413 of the Zoning Resolution seeking approval to change the use on the project site from parking and storage of motor vehicles and auto rental (Use Group 8) to accessory off-street parking (Use Group 6). The accessory off-street parking would provide the required parking for an adjacent drug store. The subject application is located in an R6 zoning district.

**PREMISES AFFECTED** – 1120 East New York Avenue, a/k/a 5 Rockaway Parkway, northeast corner of East New York Avenue and Rockaway Parkway, Block 4600, Lots 1 & 7, Borough of Brooklyn.

## **COMMUNITY BOARD # 17BK**

**APPEARANCES** –

For Applicant: Jerry Johnson.

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5, 2007, at 1:30 P.M., for decision, hearing closed.

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## **32-07-BZ**

**APPLICANT**– Omnipoint Communications Inc., for E.C. Hassell Inc., owner; Omnipoint Communications Inc., lessee.

**SUBJECT** – Application January 24, 2007 – Special Permit §73-30 and §22-21 – In an R3-2 zoning district, for a non-accessory radio tower for a public utility wireless communications facility and consist of a 62-ft. stealth flagpole (gold ball on top), together with antennas mounted and equipment cabinets on roof of nearby commercial building.

**PREMISES AFFECTED** – 146-10/16 Guy R. Brewer Boulevard, 240' south of the intersection of Guy R. Brewer Boulevard and Farmers Boulevard, Block 13310, Lots 69 & 70, Borough of Queens.

## **COMMUNITY BOARD #13Q**

**APPEARANCES** –

For Applicant: Robert Bandioso.

**ACTION OF THE BOARD** – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

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## **42-07-BZ**

**APPLICANT** – Moshe M. Friedman, P.E., for Cong. & Yeshiva Lev Somejach, owner.

**SUBJECT** – Application February 6, 2007 – Variance (§72-21) to permit the proposed conversion and extension of an existing synagogue. The Premises is located in an R5 Ocean Parkway Special District. The proposal is requesting waivers of open space and lot coverage (§113-11 and §23-141c) and side yards (§113-11 and §23-462a).

**PREMISES AFFECTED** – 203 Avenue F, a/k/a 201-203 Avenue F, 717-727 East 2<sup>nd</sup> Street, Block 5396, Lot 50, Borough of Brooklyn.

## **COMMUNITY BOARD #12BK**

**APPEARANCES** –

For Applicant: Moshe M. Friedman.

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5, 2007, at 1:30 P.M., for decision, hearing closed.

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## **54-07-BZ**

**APPLICANT** – Robert Akerman, Esq., for Ella Weiss, owner.

**SUBJECT** – Application February 23, 200 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, lot coverage and open space (§23-141); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

**PREMISES AFFECTED** – 1776 East 26<sup>th</sup> Street, west side of 26<sup>th</sup> Street, between Avenue R and Quentin Road, 200' north of Avenue R, Block 6808, Lot 34, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**APPEARANCES** –

For Applicant: Robert Akerman, Harold Weinberg.

For Opposition: Katherine A. Levine and Edward Jaworski.

**ACTION OF THE BOARD** – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## \*CORRECTION\*

This resolution adopted on April 17, 2007, under Calendar No. 288-06-BZ and printed in Volume 92, Bulletin No. 16, is hereby corrected to read as follows:

**288-06-BZ**

**CEQR #07-BSA-033Q**

APPLICANT– Sheldon Lobel, P.C., for Church of God of St. Albans, owner.

SUBJECT – Application October 30, 2006 – Variance (§72-21) to permit the construction of a two-story church in an R2 zoning district. The proposal is requesting waivers of §24-111 (FAR), §24-521 (wall height, setback and sky exposure plane), §24-34 (front yard) and §24-35 (side yard).

PREMISES AFFECTED – 223-07 Hempstead Avenue, north side of Hempstead Avenue, between 223<sup>rd</sup> and 224<sup>th</sup> Streets, Block 10796, Lot 4, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated October 4, 2006, acting on Department of Buildings Application No. 402846954, reads, in pertinent part:

“Proposed community facility FAR and total FAR is contrary to Zoning Resolution Section 24-111.

Proposed front yard is contrary to Zoning Resolution Section 24-34.

Proposed side yard is contrary to Zoning Resolution Section 24-35.

Proposed wall height, setback and sky exposure plane is contrary to Zoning Resolution Section 24-521.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district, the construction of a two-story church, which results in noncompliance as to FAR, floor area, front yard, side yard, wall height, setback, and sky exposure plane, contrary to ZR §§ 24-111, 24-34, 24-35, and 24-521; and WHEREAS, a public hearing was held on this application on March 20, 2007, after due notice by publication in *The City Record*, and then to decision on April 17, 2007; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens, recommends approval of the application; and

WHEREAS, Council Member Leroy Comrie provided a

letter in support of the application; and

WHEREAS, the owner of an adjacent property to the rear provided testimony in support of the application; and

WHEREAS, the application is brought on behalf of the Church of God of St. Albans (the “Church”), a non-profit religious institution; and

WHEREAS, the site is located on the north side of Hempstead Avenue, between 223<sup>rd</sup> Street and 224<sup>th</sup> Street; and

WHEREAS, the site has a width of 80 ft. and a depth ranging from 102.34 feet to 105.44 feet, with a total lot area of 8,314 sq. ft.; and

WHEREAS, the western portion of the site is currently occupied by a two-story semi-detached building (the “Existing Building”), which is located on the front lot line, and a one-story garage, which is occupied by the Church; the eastern portion of the site is currently vacant; and

WHEREAS, the applicant proposes to enlarge the Existing Building to the east (the Existing Building and the enlargement, hereinafter the “New Building”); and

WHEREAS, the New Building will have a total floor area of 8,024 sq. ft. (0.965 FAR); a maximum floor area of 4,157 sq. ft. (0.5 FAR) is permitted for a community facility in the subject zoning district; and

WHEREAS, the applicant proposes to maintain the existing streetwall condition by locating the New Building on the front lot line, without any front yard (a minimum front yard of 15’-0” is required); and

WHEREAS, the applicant also proposes to maintain the semi-detached condition of the Existing Building and to provide a single side yard of 40’-0” (two side yards with a minimum width of 8’-0” each are required) to the east of the New Building; and

WHEREAS, the applicant proposes to retain the existing 26’-2” perimeter wall and to add a pitched roof with a total height of 38’-3” without a setback to a portion of the New Building; a maximum perimeter wall height of 25’-0” is permitted in the subject zoning district; and

WHEREAS, the applicant proposes for the cellar level to be occupied as a community center/multi-purpose room to be used for youth and after school programs and a kitchen, accessory storage, and restrooms; and

WHEREAS, the applicant proposes for the first floor to be occupied primarily with the 98-seat worship space and also accessory office and storage space and restrooms; and

WHEREAS, the applicant proposes for the second floor to be occupied with a Bible study and meeting room, conference room, accessory office and storage space, and additional restrooms; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Church, which seeks to build a new building in order to accommodate the growing congregation and its accessory services; and

WHEREAS, specifically, the applicant represents that the proposed FAR and floor area are necessary to accommodate the programmatic needs discussed below and that the side yard, front yard, height, and setback waivers are necessary to

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accommodate the worship space on one level while accommodating the required parking spaces in a single accessory parking lot; and

WHEREAS, the applicant states that the following are the programmatic space needs of the Church: (1) a need to accommodate the significant increase in attendance over the past 30 years; (2) a need to accommodate accessory educational, meeting, and community center space; and (3) a need to improve access and modernize facilities; and

WHEREAS, as to attendance, the applicant represents that since its founding in 1976, the Church's congregation has increased substantially and has outgrown two prior facilities; and

WHEREAS, the applicant represents that the Church has a congregation of approximately 120 members and the current facility is overcrowded; and

WHEREAS, the applicant represents that the Church currently occupies a total of 4,120 sq. ft. of floor area in the Existing Building but that this cannot accommodate the required amount of worship space, offices, and accessory services; and

WHEREAS, the applicant represents that the Church's worship space is limited to the first floor of the existing building and the second floor is partially occupied by administrative use and partially occupied as a residence for the Church's custodian; and

WHEREAS, additionally, the applicant represents that the Existing Building does not have sufficient seating to accommodate the congregation and that, routinely, some attendees are required to stand during Church services; and

WHEREAS, the applicant represents that the proposed 98 seats will accommodate the current congregation and allow for some growth; and

WHEREAS, as noted, the Church offers a number of accessory services including educational and youth programs, after school programs, and meeting space available to the community, which cannot all be accommodated in the Existing Building; and

WHEREAS, as to the facilities, the proposed improvements include a larger entrance, which will be handicapped-accessible, and additional restrooms; and

WHEREAS, the applicant also proposes to provide a single accessory parking lot with eleven parking spaces on the eastern portion of the site; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the construction of the New Building is necessary to address the Church's needs, given the limitations of the Existing Building; and

WHEREAS, further, the Board notes that the New Building will be integrated with and relate to the Existing Building in an efficient manner; and

WHEREAS, the Board notes that the site's existing conditions (the Existing Building with its non-compliances) necessitates the additional waivers including front and side yards and height and setback; and

WHEREAS, accordingly, based upon the above, the

Board finds that the limitations of the Existing Building, when considered in conjunction with the programmatic needs of the Church, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Church is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized by one- and two-story buildings occupied by residential uses and by a number of commercial buildings with frontage on Hempstead Avenue; and

WHEREAS, the three attached buildings to the west of the site are occupied by commercial uses and do not have front yards; and

WHEREAS, the front of the New Building will be integrated into the Existing Building and provide a consistent street wall with the attached row of commercial buildings; and

WHEREAS, the applicant proposes to provide an open space, with parking, with a width of 40'-0" between the New Building and the existing one-story detached building to the east; and

WHEREAS, the applicant proposes to provide a parking lot with 11 spaces (ten spaces are the minimum required), which is sufficient to accommodate the parking demand; and

WHEREAS, additionally, the applicant notes that the Church has occupied the site since approximately 1983 and is a fixture in the community; and

WHEREAS, the Board agrees that the proposed New Building is compatible with the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no as of right development at the site would meet the programmatic needs of the Church; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the Church; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Church to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under

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ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA033Q, dated February 8, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R2 zoning district, the construction of a two-story church, which results in noncompliance as to FAR, floor area, front yard, side yard, wall height, setback, and sky exposure plane, contrary to ZR §§ 24-111, 24-34, 24-35, and 24-521, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 3, 2007"-(6) sheets and *on further condition*:

THAT the building parameters shall be: a total floor area of 8,024 sq. ft. (0.965 FAR), a total height of 38'-3", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 17, 2007.

**\*The resolution has been corrected to change the width, which read: '40'-8"... " now reads: '40'-0"... ". Corrected in Bulletin Nos. 18-19, Vol. 92, dated May 17, 2007.**